

**ORDINANCE NO. 2015-51 (AMENDED)  
INTRODUCED BY: ADMINISTRATION**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$30,000,000 CITY OF LYNDHURST, OHIO ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2015 (HAWKEN SCHOOL PROJECT) FOR THE PURPOSE OF MAKING A LOAN TO ASSIST HAWKEN SCHOOL IN THE FINANCING AND REFINANCING OF COSTS OF A "PROJECT" WITHIN THE MEANING OF CHAPTER 165, OHIO REVISED CODE; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT PERTAINING TO THE PROJECT AND A TRUST INDENTURE SECURING THE PAYMENT OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Lyndhurst, Ohio (the "Issuer") is authorized and empowered, by virtue of the laws of the State of Ohio, including without limitation, Section 13 of Article VIII, Ohio Constitution, and Chapter 165, as amended, Ohio Revised Code (the "Act"), among other things, to issue its revenue bonds for the purpose of making a loan and to assist in the financing and refinancing of costs of acquiring, constructing, equipping and improving a "project", as defined in Section 165.01, as amended, Ohio Revised Code, and to secure those revenue bonds by a trust indenture, as provided herein; and

**WHEREAS**, at the request of Hawken School, an Ohio nonprofit corporation (the "Borrower"), and pursuant to Section 701.07, Ohio Revised Code, the Issuer and Chester Township, Ohio (the "Township") have heretofore entered into a cooperative economic development agreement (the "CEDA") under which the Issuer and the Township have agreed that the Issuer may issue revenue bonds pursuant to the Act to assist the Borrower in financing improvements to the Borrower's facilities located in a designated area (the "CEDA Area") within the Issuer or the Township; and

**WHEREAS**, pursuant to Ordinance No. 2002-40 passed by this Council on May 20, 2002, and the CEDA, the Issuer issued its Variable Rate Economic Development Revenue Bonds, Series 2002 (Hawken School Project) in the original principal amount of \$9,995,000, dated May 30, 2002 (the "2002 Bonds"), to assist the Borrower in financing costs of acquiring, constructing and installing improvements to the Borrower's facilities located in the CEDA area, including aquatic facilities at its facilities located in the Township (the "Upper School Campus"), improvements to academic facilities within the territory of the Issuer (the "Lower and Middle School Campus"), and acquiring land adjacent to the Lower and Middle School Campus ("Project I"), and the 2002 Bonds are currently outstanding in the principal amount of \$7,110,000; and

**WHEREAS**, the Borrower has requested that the Issuer issue revenue bonds (the "Bonds") pursuant to the Act and the CEDA to assist in financing and refinancing costs of acquiring, constructing and installing improvements to the Borrower's facilities located in the CEDA area by making a loan to the Borrower to pay costs of refunding the 2002 Bonds, providing permanent financing for the costs of construction of an Early Childhood Center and other improvements at its Lower and Middle School Campus ("Project II") and financing costs of construction of a new academic building and renovation and expansion of the dining facility at its Upper School Campus ("Project III", and collectively with Project I and Project II, the Project"); and

**WHEREAS**, the Lyndhurst Community Improvement Corporation (the "CIC" has certified to the Issuer that the Project is in accordance with the plan for the industrial, commercial, distribution and research development of the Issuer confirmed by this Council pursuant to Section 1724.10, Ohio Revised Code;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Lyndhurst, Cuyahoga County, Ohio, that:

**Section 1. Definitions.** All words and terms used herein as defined words and terms but not otherwise defined herein shall have the respective meanings given to them in the Master List of Definitions attached as Exhibit E to the Loan Agreement between the Issuer and the Borrower (the "Agreement"), the form of which is on file with the Clerk of Council.

Any reference herein to the Issuer or this Council or to any officers, employees or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Ordinance.

**Section 2. Determinations.** This Council determines that, following reasonable notice, and prior to passage of this Ordinance, a public hearing was held jointly by the Issuer and the Township with respect to the issuance of the Bonds, as required by Section 147(f) of the Code

This Council also determines, based on the information provided by the Borrower in its application to the CIC, that:

(a) The Project constitutes a "project" within the meaning of that term as defined in Section 165.01(H), Ohio Revised Code.

(b) The Project is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio.

(c) Provision of the loan to finance and refinance costs of the Project will require the issuance, sale and delivery of the Bonds.

**Section 3. Authorization of Bonds; Public Approval.** It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and in the Trust Indenture with respect to the Bonds (the "Indenture") between the Issuer and U.S. Bank National Association, as trustee (the "Trustee"), and pursuant to the authority of the Act and the CEDA, the Bonds in the principal amount of not to exceed \$30,000,000 for the purpose of making a loan to assist the Borrower in financing and refinancing the costs of acquiring, constructing, equipping and improving the Project, including a portion of the costs of issuance of the Bonds and refunding the 2002 Bonds. Furthermore, this Council, as the "applicable elected representatives" of the Issuer for purposes of Section 147(f) of the Code, hereby approves the issuance of the Bonds in the maximum aggregate face amount of \$30,000,000; provided, that prior to the issuance of the Bonds, the Board of Trustees of the Township, as the "applicable elected representatives" of the Township, for purposes of Section 147(f) of the Code, approves the issuance of the Bonds.

**Section 4. Terms and Execution of the Bonds.**

(a) **Generally.** The Bonds initially shall be issued in fully registered form and shall be designated as provided in the Indenture. The Bonds shall be numbered in such manner as determined by the Trustee in order to distinguish each Bond from any other Bond, shall be in the authorized denominations and shall be dated and designated, all as provided in the Indenture. The final principal amount of the Bonds shall be set forth in Assignment, Bond Purchase, Funding and Disbursement Agreement (the "Bond Purchase Agreement") by and among the Issuer, the Borrower and FirstMerit Bank N.A. (the "Purchaser"). The Bonds shall be negotiable instruments in accordance with the Act, shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law and shall be issued in the name of the Purchaser. The Bonds may be issued as draw-down bonds with proceeds of the Bonds to be advanced from time to time in accordance with the Indenture. The Bonds may be

issued under a book entry system as and to the extent provided in the Indenture and the Bond Purchase Agreement. The Mayor or the Director of Finance is authorized and directed to sign the necessary documents relating to that book entry system. The Bonds shall be signed by the Mayor and the Director of Finance in their official capacities (provided that either or both of those signatures may be facsimiles). In case any officer whose signature or a facsimile thereof appears on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if that officer had remained in office until after that time.

The form of the Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions hereof and of the Indenture, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indenture, shall represent the approved form of Bonds.

(b) Interest Rate and Maturities. The Bonds shall mature in the years and principal amounts, shall bear interest in the years they are outstanding at the rates per year, and shall be payable as to principal and interest on the dates, all as to be provided in the Indenture, provided that the final maturity of the Bonds shall not be more than 30 years from the Closing Date.

(c) Redemption Terms. The Bonds of one or more maturities may be term bonds subject to mandatory redemption prior to maturity pursuant to the mandatory sinking fund requirements of the Indenture, on the dates and in the years and principal amounts as provided in the Indenture. The Bonds shall be subject to optional redemption prior to maturity, on the dates, in the years and at the redemption prices (expressed as a percentage of the principal amount redeemed), plus accrued interest to the redemption date, all as provided in the Indenture. The Bonds shall be subject to extraordinary optional and mandatory redemption and optional and mandatory tender for purchase and purchase in lieu of redemption prior to maturity as provided in the Indenture.

**Section 5. Sale of the Bonds.** The Bonds shall be sold to FirstMerit Bank, N.A. (the "Purchaser") pursuant to the Bond Purchase Agreement on the terms and conditions described therein. The Director of Finance, on behalf of the Issuer, is authorized and directed to make the necessary arrangements with the Purchaser to establish the date, location, procedure and conditions for the delivery of the Bonds, and to take all steps necessary to effect due execution and delivery of the Bonds under the terms of this Ordinance, the Bond Purchase Agreement, the Loan Agreement and the Indenture. Director of Finance is authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, the Bond Purchase Agreement in substantially the form submitted to and now on file with the Issuer which is hereby approved, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the Issuer as may be permitted by the Act and approved by such officer executing the same on behalf of the Issuer. The approval of such changes by such officer, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Bond Purchase Agreement by such officer. The proceeds from the sale of the Bonds shall be loaned to the Borrower and applied as provided in the Indenture, the Agreement and the Bond Purchase Agreement.

**Section 6. Arbitrage and Information Reporting Provisions.** The Director of Finance, in conjunction with the Borrower or any officer, employee, agent of or consultant to the Borrower and the Trustee, shall sign and deliver a tax certificate and agreement (the "Tax Agreement"), which shall include:

- (i) an appropriate certificate of the Issuer for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the Issuer regarding the amount and use of the proceeds of the Bonds and the facts, estimates and circumstances on which they are based and other facts and circumstances relevant to the tax treatment of interest on

the Bonds, which shall be based on information provided by the Borrower, all as of the date of delivery of and payment for the Bonds; and

- (ii) the statement setting forth the information required by Section 149(e) of the Code, which shall be based on the relevant information provided by the Borrower.

The Issuer covenants that it (i) will take, or require to be taken, all actions that may be required of it and that are within its power and control for the interest on the Bonds to be and remain excluded from gross income of the registered owners thereof for federal income tax purposes, and (ii) will not knowingly take or authorize to be taken any actions that, in the opinion of nationally recognized bond counsel, would adversely affect that exclusion under the provisions of the Code. The Mayor, the Director of Finance, the Clerk of Council and other appropriate officers are hereby authorized and directed to take any and all actions and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

**Section 7. Authorization of Agreement, Indenture, and All Other Documents to be Executed by the Issuer.** In order to better secure the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable, to provide for the financing and refinancing of the Project and to facilitate the development of the Project, the Mayor and Director of Finance are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, the Agreement and the Indenture in substantially the forms submitted to and now on file with the Issuer which are hereby approved, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by such officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Agreement and the Indenture by such officers.

The Mayor, the Director of Finance and the Clerk of Council are each separately authorized to take any and all actions and to execute such agreements, financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Squire Patton Boggs (US) LLP, as Bond Counsel, in order to effect the issuance of the Bonds, the financing of the Project and the intent of this Ordinance.

**Section 8. Security for Bonds.** To the extent provided in and except as otherwise permitted by the Indenture, (i) the Bonds shall be special obligations of the Issuer and the Bond Service Charges thereon shall be payable equally and ratably solely from the Revenues, as defined and provided in the Indenture and being generally the Loan Payments to be made by the Borrower to the Trustee pursuant to the Agreement, and the money and investments in the Special Funds established under the Indenture and held by the Trustee, and (ii) the payment of Bond Service Charges shall be secured by an assignment of and grant of a security interest in the Revenues and the assignment of the Agreement (save for the Unassigned Rights thereunder) pursuant to the Indenture. The Bonds may be further secured by a policy of municipal bond insurance or a letter of credit (or other credit, liquidity or similar agreement) if so provided in the Bond Purchase Agreement and the Indenture. The Borrower may enter into security or other agreements with the Purchaser to further secure the Bonds. The Mayor, the Director of Finance and the Clerk of Council are authorized to enter into such insurance or credit agreements if so requested by the Borrower.

Notwithstanding anything to the contrary in this Ordinance, the Bonds or the Indenture, the Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit of the Issuer, and the Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the Revenues and are not secured by an obligation or pledge of any moneys raised by taxation. Nothing herein shall be deemed, however, to prohibit the Issuer, of its own volition, from using to the extent lawfully authorized to do so any other

resources for the fulfillment of any of the terms, conditions or obligations of the Indenture, this Ordinance or any of the Bonds.

**Section 9. Funds and Allocation of Bond Proceeds to Funds; Refunding of Refunded Bonds.** The Indenture creates the Bond Fund and the Improvement Fund as Special Funds to be held by the Trustee and included in the Revenues given as security for the Bonds. The Indenture further creates the Issuance Expenses Fund and the Rebate Fund as funds to be held by the Trustee but not to be included in the Revenues given as security for the Bonds. The amount paid under the Bond Purchase Agreement as the purchase price for the Bonds, whether on the date the Bonds are issued or at the time advances of Bond proceeds are made from time to time, shall be received and receipted on behalf of the Issuer by the Trustee or the Borrower and transferred to the Trustee or the Borrower whereupon it shall be allocated, deposited, and credited by the Trustee as follows: (a) the amount specified in the Indenture for deposit in the Issuance Expenses Fund shall be deposited in that Fund, provided that such amount shall not exceed the amount permitted by the Code, to be used to pay issuance costs of qualified private activity bonds; (b) the amount specified in the Tax Agreement for constructing, renovating, furnishing and equipping of the Project III and advanced by the Purchaser from time to time in accordance with the Bond Purchase Agreement and the Indenture shall be deposited in the Improvement Fund or delivered directly to the Borrower, as provided in the Indenture; (c) the amounts specified in the Indenture to refund the Refunded Bonds shall be applied as set forth in the Indenture and (d) the amounts specified in the Indenture to pay the balance owing under the PNC Line of Credit. Proceeds for cost of issuance, as an alternative to deposit in the Issuance Expenses Fund, may be paid directly by the Purchaser or the Borrower, subject to the aforementioned limitation as to amount under the Code.

The Refunded Bonds shall be redeemed and refunded in accordance with the terms of the Trust Indenture between the Issuer and U.S. Bank National Association, as Trustee, dated as of May 1, 2002 (the "2002 Indenture"), and the Indenture. The refunding of the Refunded Bonds is not required, and whether all or a portion of such bonds are to be refunded shall be based on the determination of the Borrower. Any money in the special funds held in trust under the 2002 Indenture may be used to refund the Refunded Bonds to be refunded as provided in the Indenture. Proceeds of the Bonds for refunding the Refunded Bonds (i) may be paid to reimburse the issuer of the letter of credit securing the Refunded Bonds for payment of the redemption price thereof and (ii) may, but is not required to be, held in an escrow or other fund maintained by the Trustee until application. If determined advisable by the Trustee, the Issuer may sign and deliver an escrow agreement ("Escrow Agreement") providing for use of Bond proceeds for the preceding purposes with respect to the refunding of the Refunded Bonds.

**Section 10. Covenants of Issuer.** In addition to other covenants of the Issuer in this Ordinance, the Issuer further covenants and agrees as follows:

(a) **Payment of Principal, Premium and Interest.** The Issuer will, solely from the sources herein or in the Indenture provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Bonds on the dates, at the places and in the manner provided herein, in the Indenture and in the Bonds.

(b) **Performance of Covenants, Authority and Actions.** The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bonds, the Agreement, the Bond Purchase Agreement and the Indenture, and in all proceedings of the Issuer pertaining to the Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the laws of the State of Ohio, including particularly and without limitation the Act, to issue the Bonds and to execute the Agreement, the Bond Purchase Agreement and the Indenture, and all other documents to be executed by it, to provide for the security for payment of the principal of, premium, if any, and interest on the Bonds in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Bonds and execution and delivery of the Agreement, the Bond Purchase Agreement, the Indenture and all other documents

to be executed by it in connection with the issuance of the Bonds, have been or will be duly and effectively taken; and that the Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof.

**Section 11. Transcript of Proceedings.** The Clerk of Council, or other appropriate officer of the Issuer, shall furnish to the Purchaser a true transcript of proceedings, certified by the Clerk or other officer, of (i) all proceedings had with reference to the issuance of the Bonds and (ii) any other information from the records of the Issuer which may be necessary or appropriate to determine the regularity and validity of the issuance of the Bonds.

**Section 12. Direct Placement.** As the Bonds are being purchased directly by the Purchaser, an Offering Circular relating to the original issuance of the Bonds will not be prepared by the Borrower.

**Section 13. Open Meetings.** It is found and determined that all formal actions of this Council and of any of its committees concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council or committees, and that all deliberations of this Council and any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

**Section 14. Effective Date.** This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective to facilitate the Project, thereby creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the Issuer and the State of Ohio; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: August 3, 2015

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**VICE-MAYOR**

ATTEST: \_\_\_\_\_  
*Clerk of Council*

I, the undersigned Clerk of Council of the City of Lyndhurst, hereby certify that there is no newspaper published or having an office of publication in said City, and that I published the foregoing Resolution by advertising the same by title on one day in each of two consecutive weeks in a newspaper of general circulation in said City, on August 13, 2015 and August 20, 2015.

\_\_\_\_\_  
*Clerk of Council*

First Reading: July 6, 2015

Second Reading: August 3, 2015

Third Reading: Suspended